

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT

IN RE:

MARK ANTHONY PEEK AND
SUSAN ELIZABETH PEEK AKA
SUSAN E. ROUSE

CASE NO. 20-40851-TJT
CHAPTER 13
HONORABLE THOMAS J. TUCKER

DEBTORS.

NICHOLAS D. CHAMBERS (P72084)
Attorney for Debtors
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CRAIG S. SCHOENHERR, SR. (P32245)
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**MOTION OF SANTANDER CONSUMER USA INC. FOR RELIEF FROM ORDER
ESTABLISHING "CRAMMED DOWN" VALUE OF COLLATERAL OF SANTANDER
CONSUMER USA INC.**

Santander Consumer USA Inc. ("Creditor"), pursuant to Fed. R. Civ. P. 60(b) and L.B.R. 9014-1 and 4001-1 (E.D.M.), moves to for relief from the Order Establishing "Crammed Down" Value of Collateral of Santander Consumer USA (DN 24) regarding a 2014 Dodge Ram 1500 bearing Vehicle Identification No. 1C6RR7MT7ES118057. This Motion is based on the following:

1. This Court has jurisdiction over the proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157.

2. On January 21, 2020 (the Petition date), Debtors filed a Voluntary Petition for Relief under Chapter 13 of the Bankruptcy Code.

3. On January 28, 2020, the Debtors filed a Motion to Establish “Crammed Down” Value of Vehicle regarding the 2014 Dodge Ram 1500 (DN 15).

4. The deadline to respond to the Motion to Establish Value was February 11, 2020.

5. The Creditor inadvertently failed to timely file a response to the Motion.

6. The Order Establishing “Crammed Down” Value of Collateral was entered on February 18, 2020 (DN 24).

7. The Creditor requests that the Order be set aside so that it can file a response to the Motion.

8. Fed. R. Civ. P. 60(b)(1) provides that “[o]n motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: mistake, inadvertence, surprise, or excusable neglect[.]”

9. In determining whether to set aside a default judgment, the Court considers three factors: (1) whether Debtor's culpable conduct led to the default, (2) whether the Debtor has a meritorious defense, and (3) whether the UST will be prejudiced. *Waifersong, Ltd. Inc. v. Classic Music Vending*, 976 F.2d 290, 292 (6th Cir. 1992).

10. The determination of whether a party’s neglect is excusable “is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission . . . [including] the danger of prejudice to the [party opposing relief], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.”

Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993).

11. “The decision on a motion to set aside a default judgment is left to the discretion of the trial judge.” *Bavely v. Powell (In re Baskett)*, 219 B.R. 754, 757 (6th Cir. BAP 1998).

12. Here, the Order Establishing “Cramdown Value” was entered just over two months ago, and the Debtors’ Amended Chapter 13 Plan has not yet been confirmed.

13. The Creditor discovered that it inadvertently failed to respond to the Motion to Establish “Crammed Down” Value as it was preparing to timely object to the Amended Chapter 13 Plan, which it has since done and the Creditor has acted in good faith in seeking relief from the Order as soon as it discovered its inadvertence.

14. The Debtors will not be prejudiced if relief is granted from the Order Establishing “Crammed Down” Value because the Amended Chapter 13 Plan has not been confirmed yet, and the dispute concerning the fair market value of the 2014 Dodge Ram 1500 can be timely resolved as part of the Motion and confirmation process.

15. As stated in the Creditor’s Objection to Confirmation, the Creditor has a meritorious defense to the Motion to Establish “Crammed Down” Value because the NADA clean retail value of the 2014 Dodge Ram is \$24,350.00, not \$10,000.00 as asserted by the Debtor. (Exhibit 6.)

16. The proposed Order Setting Aside Order Establishing “Crammed Down” Value of Collateral of Santander Consumer USA Inc. is attached as Exhibit 1.

17. Concurrence of opposing counsel in the relief sought was requested on April 21, 2020, and was denied.

In conclusion, the Creditor requests the following:

(a) The entry of the attached Order Granting Motion to Set Aside Order Establishing “Crammed Down” Value of Collateral of Santander Consumer USA Inc. (Exhibit 1); **and**

(b) Such other relief the Court deems necessary for the Creditor to protect its interests in its collateral and provide adequate protection.

O'REILLY RANCILIO P.C.

/s/ Craig S. Schoenherr, Sr.

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DATED: April 22, 2020

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
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IN RE:

MARK ANTHONY PEEK AND
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**ORDER GRANTING MOTION FOR RELIEF FROM ORDER ESTABLISHING
“CRAMMED DOWN” VALUE OF COLLATERAL OF SANTANDER CONSUMER USA**

Santander Consumer USA Inc. (“Creditor”) having filed its Motion for Relief from Order Establishing “Crammed Down” Value of Collateral of Santander Consumer USA; no parties having filed an objection to said Motion pursuant to the Notice of Motion; and the Certificate of No Response having been filed in this matter:

IT IS ORDERED that:

- 1) The Motion for Relief from Order Establishing “Crammed Down” Value of Collateral of Santander Consumer USA is granted.
- 2) The Order Establishing “Crammed Down” Value of Collateral of Santander Consumer USA (DN 24) is set aside.
- 3) The Creditor shall have seven (7) days from the entry of this Order to file a response to the Motion to Establish “Crammed Down” Value (DN 15).

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**NOTICE OF MOTION OF SANTANDER CONSUMER USA INC. FOR RELIEF FROM
ORDER ESTABLISHING "CRAMMED DOWN" VALUE OF COLLATERAL OF
SANTANDER CONSUMER USA INC.**

Santander Consumer USA Inc. has filed papers with the court for Relief from the Order Establishing "Crammed Down" Value of Collateral.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one).

If you do not want the court to grant relief from the Order Establishing "Crammed Down" Value of Collateral, or if you want the court to consider your views on the Motion of Santander Consumer USA Inc. for Relief from the Order Establishing "Crammed Down" Value of Collateral, within 14 days, you or your attorney must:

1. File with the court a written response or an answer, explaining your position, at: ¹

United States Bankruptcy Court
211 W. Fort Street, Suite 2100
Detroit, MI 48226

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

You must also mail a copy to:

Craig S. Schoenherr, Sr. (P32245)
Attorney for Creditor,
O'Reilly Rancilio P.C.
12900 Hall Road, Suite 350
Sterling Heights, MI 48313-1151

Tammy L. Terry
Chapter 13 Trustee
535 Griswold, Suite 2100
Detroit, MI 48226

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time, and location of the hearing.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

O'REILLY RANCILIO P.C.

/s/ Craig S. Schoenherr, Sr.

CRAIG S. SCHOENHERR, SR. (P32245)

Attorney for Creditor

12900 Hall Road, Suite 350

Sterling Heights, MI 48313-1151

(586) 726-1000

ecf@orlaw.com

DATED: April 22, 2020

¹Response or answer must comply with Fed. R. Civ. P. 8(b), (c) and (e)

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**BRIEF IN SUPPORT OF MOTION OF SANTANDER CONSUMER USA INC. FOR
RELIEF FROM ORDER ESTABLISHING "CRAMMED DOWN" VALUE OF
COLLATERAL OF SANTANDER CONSUMER USA INC.**

The Creditor, in support of its Motion for Relief from Order Establishing "Crammed Down" Value of Collateral of Santander Consumer USA Inc., relies on Fed. R. Civ. P. 60, L.B.R. 9014-1 and 4001-1 (E.D.M.), *Waifersong, Ltd. Inc. v. Classic Music Vending*, 976 F.2d 290 (6th Cir. 1992), *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 113

S. Ct. 1489, 123 L. Ed. 2d 74 (1993), and *Bavelly v. Powell (In re Baskett)*, 219 B.R. 754 (6th Cir. BAP 1998).

O'REILLY RANCILIO P.C.

/s/ Craig S. Schoenherr, Sr.

CRAIG S. SCHOENHERR, SR. (P32245)

Attorney for Creditor

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Sterling Heights, MI 48313-1151

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DATED: April 22, 2020

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**PROOF OF SERVICE OF MOTION OF SANTANDER CONSUMER USA INC. FOR
RELIEF FROM ORDER ESTABLISHING "CRAMMED DOWN" VALUE OF
COLLATERAL OF SANTANDER CONSUMER USA INC.**

CRAIG S. SCHOENHERR, SR., being duly sworn, says that on the 22nd day of April, 2020, a copy of the Motion of Santander Consumer USA Inc. for Relief from the Order Establishing "Crammed Down" Value of Collateral, Brief in Support, Notice of Motion and this Proof of Service was served upon:

Tammy L. Terry
Trustee
535 Griswold, Suite 2100
Detroit, MI 48226

Nicholas D. Chambers
Attorney for Debtors
39319 Plymouth Road, Suite 1
Livonia, MI 48150

Mark Anthony Peek and
Susan Elizabeth Peek aka Susan E. Rouse
17920 Loveland
Livonia, MI 48152

electronically pursuant to the court notice of service, and to those not electronically registered by placing documents in an envelope, correctly addressed and placing same in the United States Mail with postage prepaid.

O'REILLY RANCILIO P.C.

/s/ Craig S. Schoenherr, Sr.

CRAIG S. SCHOENHERR, SR. (P32245)

Attorney for Creditor

12900 Hall Road, Suite 350

Sterling Heights, MI 48313-1151

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